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Supreme Court, U.S.
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No. 88-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

UNISYS CORPORATION,

Petitioner,

v.

UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

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QUESTION PRESENTED FOR REVIEW

When a federal court of appeals, sitting en banc, has defined a statutory term, does the doctrine of *stare decisis* require a panel of a successor federal court of appeals to follow that precedent in the absence of legislative change or a showing of clear error?

LIST OF PARTIES

The parties to the proceedings in the United States Court of Appeals for the Federal Circuit were Burroughs Corporation and the United States. On or about November 12, 1986, shortly after the acquisition of Sperry Corporation by Burroughs Corporation, the name of the petitioner was changed from Burroughs Corporation to Unisys Corporation.

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IN THE

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No. 88-

BURROUGHS CORPORATION,

Petitioner,

v.

UNITED STATES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

The petitioner, Burroughs Corporation, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Federal Circuit, entered on April 26, 1988, which affirmed the judgment of the United States Court of International Trade in favor of respondent, United States.

OPINIONS BELOW

The opinion of the Court of Appeals for the Federal Circuit is reported at 6 Fed. Cir. (T) ___(Slip Op. 87-1404, April 26, 1988), 845 F.2d 321 (Fed. Cir. 1988) (Appendix A at 1a-8a). The opinion of the Court of International Trade is reported at 11 CIT ___(1987), 664 F.Supp. 507 (Ct. Int'l Trade 1987) (Appendix B at 9a-23a).

JURISDICTION

On April 15, 1987, the Court of International Trade entered judgment in favor of the respondent, dismissing petitioner's action which was brought under 28 U.S.C. § 1581(a). Petitioner appealed to the Court of Appeals for the Federal Circuit pursuant to 28 U.S.C. § 1295(a)(5). The Court of Appeals for the Federal Circuit entered judgment for the respondent, affirming the judgment of the Court of International Trade, on April 26, 1988. This petition was filed within ninety days thereafter. This Court has jurisdiction to review the judgment of the Court of Appeals for the Federal Circuit under 28 U.S.C. § 1254(1).

RELEVANT STATUTES

The statutes relevant to this case, certain provisions of the Tariff Schedules of the United States, 19 U.S.C. § 1202, as modified by Presidential Proclamation 3822, 32 Fed. Reg. 19002 (1967), [hereinafter cited as T.S.U.S.] are reprinted in Appendix C at 24a.

STATEMENT OF THE CASE

This action arose as a consequence of the importation by Burroughs Corporation of three types of office machines: electronic desk calculators, transaction recorders, and transaction terminals.

The District Director of Customs at the port of Detroit, Michigan, classified the imported office machines under the provision for "[a]ccounting, computing, and other data-processing machines" "incorporating a calculating mechanism," item 676.15 of the Tariff Schedules of the United States, 19 U.S.C.

§ 1202, as modified by Presidential Proclamation 3822, 32 Fed. Reg. 19002 (1967), [hereinafter cited as item 676.15, T.S.U.S.]. Duty was assessed at the applicable rate of 5.5% ad valorem.

Petitioner filed protests pursuant to 19 U.S.C. § 1514 against the classification utilized by the United States Customs Service. Burroughs claimed that the merchandise should have been classified as "[o]ffice machines not specially provided for," under item 676.30, T.S.U.S., and asessed with duty at the rate of 5% ad valorem.

Proceedings in the United States Court of International Trade

Upon the denial of the protests by the Customs Service, the petitioner brought suit against the United States in the Court of International Trade, under 28 U.S.C. § 1581(a), challenging the classification. The petitioner's primary claim is that the United States Court of Customs and Patent Appeals has held that an integrated circuit is not a "mechanism" for tariff purposes; the calculations performed by each of the petitioner's machines are accomplished entirely within an integrated circuit known as the arithmetic logic unit or ALU; and, because the office machines in question do not perform calculations by means of a "mechanism," they do not incorporate the "calculating mechanism," which is the condition precedent to classification in item 676.15, T.S.U.S.

The Court of International Trade determined that although "[T]he phrase 'calculating mechanism' as a whole has never been judicially interpreted," the term "mechanism" "has been defined in what the Court considers authoritative and controlling precedent,"

(App. at 11a) in the case of *Texas Instruments Inc.* v. *United States*, 475 F.Supp. 1183 (Cust.Ct. 1979), *aff'd*, 620 F.2d 269 (CCPA 1980) (Appendix D at 25a-32a). The Court of International Trade noted that, in the *Texas Instruments* case, the Court of Customs and Patent Appeals rejected the argument that integrated circuits, imported for use in solid state digital watches, were subject to classification as "clock . . . mechanisms":

> That argument turns on the meaning of "mechanism" at the time the TSUS were enacted. That meaning is of a breadth insufficient to encompass a solid-state module having no moving parts.
>
> . . . . .
>
> The integrated circuit before us is not a sub-assembly of a mechanism for the same reason it is not a sub-assembly of a movement: there is simply no physical movement or motion generated in or by the circuit.
>
> *Texas Instruments*, 67 CCPA at 64, 620 F.2d at 272.

App. at 12a-13a.

In *Texas Instruments*, the Court of Customs and Patent Appeals held that solid-state integrated circuits, in which "there is simply no physical movement or motion generated," were not encompassed within the common meaning of "mechanism," and thus did not constitute a "mechanism . . . intended or suitable for measuring time." App. at 31a-32a. Precisely the same determination was made by the Court of International Trade as to the physical form of the in-

tegrated circuit arithmetic logic units of the Burroughs machines, i.e.: "It is conceded that the ALU does not contain moving parts." App. at 14a. From that point on, however, the decision departed from the analysis in *Texas Instruments*; the Court of International Trade considered "the interrelationship among the keyboard, the ALU, and the printer" and decided "[w]hile it is agreed that no mechanism connects these individual parts, the parts taken as a whole constitute a calculating mechanism." App. at 15a.

Proceedings in the Court of Appeals for the Federal Circuit

Burroughs appealed the decision of the Court of International Trade to the Court of Appeals for the Federal Circuit, which affirmed the classification of the subject merchandise under item 676.15, T.S.U.S. on other grounds. While the Federal Circuit alluded to the reasoning of the Court of International Trade, it did so without comment, criticism, concurrence, or contradiction, and then departed even further from the decision in *Texas Instruments* by redefining the term "mechanism." "The definition of 'mechanism' was not limited to articles which contained moving parts at the time TSUS was enacted." App. at 5a. The Federal Circuit concluded "that the term 'calculating mechanism' does not require moving parts and was intended to cover machines in which the calculations are performed in integrated circuits." App. at 8a.

REASONS FOR GRANTING THE WRIT

I. The Decision Of The Federal Circuit Conflicts With A Decision Rendered By Its Predecessor, The Court Of Customs And Patent Appeals.

There can hardly be a clearer conflict than that which exists between the holding of the Court of Customs and Patent Appeals in *Texas Instruments*: "the meaning of 'mechanism' at the time the TSUS were enacted . . . is of a breadth insufficient to encompass a solid state module having no moving parts" (App. at 32a) and that which was expressed by the Federal Circuit in this case: "[t]he definition of 'mechanism' was not limited to articles which contained moving parts at the time TSUS was enacted." App. at 5a.

The decision of the Federal Circuit, because it results in an irreconcilable conflict within the circuit and represents a drastic departure from well-established judicial principles, warrants the attention of this Court.

II. The Federal Circuit Did Not Follow Binding Precedent When It Held That "Mechanism" Had A Common Meaning Different From That Adopted In The *Texas Instruments* Case For The Same Statutory Term.

The Federal Circuit was established on October 1, 1982, by the Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25. Sitting en banc in the first decision rendered by the newly formed court, *South Corporation and Seal Fleet, Inc.* v. *United States*, 690 F.2d 1368 (Fed. Cir. 1982), the court held that the holdings of its predecessors, the United States Court of Claims and the United States Court of Customs and Patent Appeals, would be bind-

ing as precedent in the Federal Circuit. The goal expressed by the Federal Circuit was to continue

> the stability in those areas of law previously within the jurisdiction of our predecessor courts. That jurisprudence was established in great part by judges now members of this court. The public and the bar have presumably structured their legal affairs in accordance with that jurisprudence. To abandon it at this stage would be to cast the court, the public, and the bar adrift on a sea of uncertainty.

Id. at 1371.

Implicit in the Federal Circuit's initial decision was recognition of the importance of the doctrine of *stare decisis*, whereby courts follow their previous decisions and are reluctant to disturb settled issues:

> For every panel of judges of this court to examine anew every issue presented would be a practice devoid of counterbalancing advantage. Such an alternative, "start from scratch" approach would entail years of delay in constructing a body of law worthy of description as the law of the circuit. We choose therefore to begin on a readily available and clearly identifiable base, maintaining at the same time a controlled capacity for change when change is compelled.

Id. at 1370.

The jurisprudence of the predecessor courts adopted by the Federal Circuit quite clearly reflects not only the rightful respect generally accorded to the doctrine

of *stare decisis* by those courts but also the specific application of that doctrine to matters involving the interpretation of the statutory terms which are within their exclusive jurisdiction. As noted by the Court of Customs Appeals, the penultimate predecessor of the Federal Circuit:

> We think it well settled that where a court of competent jurisdiction settles and judicially defines the common meaning of a term used in the statute, such a determination and adjudication becomes matter of law. In *Marvel* v. *Merritt*, 116 U.S. 11, Mr. Justice Matthews said:
>
> The words used are not technical, either as having a special sense by commercial usage, nor as having a scientific meaning different from their popular meaning. They are the words of common speech, and, as such, their interpretation is within the judicial knowledge, and, therefore, matter of law.
>
> Again, in *Sonn* v. *Magone*, 159 U.S. 417, it was said:
>
> The interpretation of words of common speech is within the judicial knowledge and matter of law. *Marvel* v. *Merritt*, 116 U.S. 11; *Nix* v. *Hedden*, 149 U.S. 304; *Cadwalader* v. *Zeh*, 151 U.S. 171; *Saltonstall* v. *Wiebusch*, 156 U.S. 601.
>
> This court has followed the same rule and when, as a matter of law, it has once determined the common meaning of a term used in a statute, has adhered to such common meaning until a legislative change in the

> statutory enactment in question has necessitated a changed determination of such meaning.

United States v. *Ben Felsenthal & Co.*, 16 Ct. Cust. Appls. 15, 17-18 (1928).

The views expressed in the *Felsenthal* case have been followed and endorsed by the Court of Customs and Patent Appeals in the interpretation of the tariff laws and the application of *stare decisis* thereto. "In the absence of a special commercial designation, the language of a tariff statute is to be construed in accordance with its common meaning." *Trans-Atlantic Co.* v. *United States*, 471 F.2d 1397, 1398 (CCPA 1973). "It is well settled that the common meaning of a tariff term is not a question of fact, but a question of law. . . . [C]ommon meaning . . . must be determined as of the date of the enactment of the tariff act." *United States* v. *O. Brager-Larsen*, 36 CCPA 1, 3-4 (1948). "The common meaning to be attached to a term or word used by the Congress in a provision of a tariff act is a matter to be determined by the court having the same under consideration. In making this determination the court may rely upon its own understanding of the word or term used, and it may assist its own understanding by reference to the works of standard lexicographers, scientific authorities, the testimony of witnesses, or by such other means as may be available." *United States* v. *John B. Stetson Co.*, 21 CCPA 3, 9 (1933). "A common meaning, having been once established and determined by a court, will be presumed to continue until the language is changed by subsequent legislation." *United States* v. *Great Pacific Co., Shui Tai & Co.*, 23 CCPA 319,

324 (1936); *Sears, Roebuck and Co.* v. *United States*, 46 CCPA 79 (1959).

In *Texas Instruments*, the judges of the Court of Customs and Patent Appeals followed established principles of customs jurisprudence when they determined the common meaning of the statutory term "mechanism" in connection with the Government's alternative claim that integrated circuits were classifiable as "clock movements or mechanisms." The court referred to lexicographical definitions available at the time of the enactment of the Tariff Schedules pursuant to the Tariff Classification Act of 1962 Pub. L. No. 87-456, 76 Stat. 72, and from those definitions, concluded that the Government's

> argument turns on the meaning of "mechanism" at the time the TSUS were enacted. That meaning is of a breadth insufficient to encompass a solid state module having no moving parts. *Webster's Third New International Dictionary* (1961) defines mechanism as "a piece of machinery: a structure of working parts functioning together to produce an effect," with machine defined as "[a]ny device consisting of two or more . . . parts, which . . . may serve to transmit and modify force and motion . . . ." That that meaning has long been accepted is evidenced by *Lockwood's Dictionary of Mechanical Engineering Terms* (1913), defining mechanism as "an assemblage of parts . . . which embraces the essential principles on which the machine is constructed," and "machine" "an assemblage of parts . . . by which motion and force are transmitted."

> The integrated circuit before us is not a subassembly of a mechanism for the same reason it is not a subassembly of a movement: there is simply no physical movement or motion generated in or by the circuit.

Texas Instruments, App. at 32a.

The decision of the Court of Customs and Patent Appeals in *Texas Instruments* settled the issue of the common meaning of the term mechanism, and as such was *stare decisis* in this case since the classification of the petitioner's merchandise also depends on the common meaning of the same term.

III. The Federal Circuit Did Not Identify Any "Clear Error" In The Decision In *Texas Instruments* Which Would Justify The Divergent Result Reached Below.

Petitioner acknowledges the fact that the Federal Circuit was not absolutely precluded from rejecting the definition of mechanism promulgated in *Texas Instruments* and finding a different common meaning for that term. However, "readjudication of issues previously determined demands a clear and convincing showing of error; this requirement is not satisfied by reargument of former issues." *Department of Energy* v. *Westland*, 565 F.2d 685, 690 (CCPA 1977). "The public policy of putting an end to litigation and of not reopening questions which have been decided is a sound one, subject only to the qualification that *clear* error should not be perpetuated." *United States* v. *Mercantil Distribuidora, S.A.*, 45 CCPA 20, 23 (1957). No such error has been shown or cited by the Federal Circuit in this case.

The decision of the Federal Circuit contains the statement that "[t]he term 'mechanism' was defined by the CCPA in the course of determining whether the integrated circuit at issue was part of a watch or clock movement." App. at 5a. In fact, the Court of International Trade correctly noted that "the court in *Texas Instruments* was concerned with a different industry, but its definition of mechanism involves the TSUS as a whole. The *Texas Instruments* Court . . . discuss[ed] generic definitions of mechanism existing at the time of that enactment." App. at 13a. The Court of Customs and Patent Appeals did decide that the merchandise before that court was not a "watch movement" after referring to evidence, testimony, and definitions pertinent to the watch industry, but the lexicographical definitions of the term "mechanism" which were adopted by the Court in the *Texas Instruments* case, quoted above at page 10, are in no respect limited to that horological context. App. at 32a.

The Federal Circuit stated that "[t]he phrase 'calculating mechanism' was defined in Headnote 2(b) in terms of the results to be achieved, 'designed to perform one or more of the four arithmetical operations,' rather than in terms of the method of accomplishing those results." App. at 7a. However, Headnote 2(b) only defines the word "calculating" in functional terms; the headnote is silent with respect to the intended meaning of "mechanism." The *Texas Instruments* court rejected substantially the same "functional analysis" when it was advanced in connection with Schedule 7, Part 2, Subpart E Headnote 2(c), T.S.U.S., which defines "clock movements" as "any . . . mechanism . . . intended or suitable for

measuring time." App. at 31a. The court held that timekeeping capability was not the sole criterion of a "clock . . . mechanism"; an integrated circuit is not classifiable as a "mechanism" because "there is simply no physical movement or motion generated in or by the circuit." App. at 32a. In contrast, by holding that the functional capability of performing arithmetic functions is the sole prerequisite to classification under item 676.15, T.S.U.S., the Federal Circuit construed the word "mechanism" as if it were wholly superfluous, and thereby read the word "mechanism" out of the statute. That interpretation is entirely inconsistent with the "basic rule of statutory construction that, if possible, significance and effect should be given to every word. *Ex parte Public Bank*, 278 U.S. 101." *Carey & Skinner, Inc.* v. *United States*, 42 CCPA 86, 89 (1954).

Although the Federal Circuit discussed the legislative history of the Tariff Schedules, identifying a portion of the *Tariff Classification Study*[1] referring to the term in issue, that portion only reiterates the language of the statute without providing any explanatory or definitional material whatsoever. App. at 6a. The Federal Circuit also noted a single letter from an industry source to the Tariff Commission, which comments on several tariff provisions, including item 676.15, T.S.U.S. App. at 7a. That letter, which neither mentions nor discusses the statutory term in issue, cannot be considered part of the legislative history.[2]

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[1] United States Tariff Commission, *Tariff Classification Study*, Schedule 6—Metals and Metal Products (1960).

[2] "[N]ot everything which may bear some relation to the for-

IV. The Failure To Follow Binding Precedent Is An Error So Fundamental That It Should Be Corrected By This Court Which Alone Has The Power To Do So.

The established role of precedent is the outgrowth of the doctrine of *stare decisis*. Whenever "a court has in one case decided a question of law it will in subsequent cases in which the same question of law arises ordinarily decide it in the same way. The doctrine . . . is applicable although the parties in the later action are different from those in the prior actions." *Department of Energy* v. *Westland*, 565 F.2d at 689 [Quoting RESTATEMENT OF JUDGMENTS, § 70, Comment a (1942)]. Only a court sitting en banc is not bound by prior opinions and has the power and right in appropriate cases to overrule panel opinions. One panel of a court of appeals may overrule an earlier decision of another panel squarely on point only if there is an intervening and overriding decision of this Court. *White* v. *Estelle*, 720 F.2d 415, 417 (5th Cir. 1983).

Stare decisis is especially significant in cases involving statutory construction because Congress is free to correct any error made by the courts. "Until it does, the bar and the public are justified in expecting the courts, except in the most egregious cases, neither to depart from previous interpretations of statutes, nor to give them a grudging application."

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mation and enactment of a statute is pertinent to the legislative history of that statute. Congress has not delegated to unofficial individuals or organizations which may appear before one of its committees advocating legislation, the authority to construe for it and the public statutes which it enacts." *United States* v. *Kung Chen Fur Corporation*, 188 F.2d 577, 584 (CCPA 1951).

Fast v. *School District of City of Ladue*, 728 F.2d 1030, 1034 (8th Cir. 1984). The Federal Circuit decision, which fails to follow its precedent and departs from the interpretation of the statutory term "mechanism" in *Texas Instruments*, is contrary to these well founded judicial principles. The discordant result is particularly inexplicable in light of the fact that the Federal Circuit has frequently noted the importance of precedent. Significantly, in *Elbe Products Corp.* v. *United States*, 846 F.2d 743 (Fed. Cir. 1988) a very recent decision of the Federal Circuit involving statutory interpretation, the court refused to accept the Government's contention as to the meaning of

> headnote 4(b) because it conflicts with the decision of our predecessor court, the Court of Customs and Patent Appeals, in *United States* v. *Elbe Products Corp.*, 655 F.2d 1107, 1111, 68 CCPA 72 (1981) (*Elbe I*).
>
> . . . .
>
> The Government attempts to disparage and downgrade *Elbe I*, but that precedent is binding on this panel and we are not free to overrule or bypass it.

Id. at 744-745.

In *Moragne* v. *States Marine Lines, Inc.*, 398 U.S. 375 (1970), this Court expressed similar views when, before it overruled an 1886 decision, it examined the policy behind the doctrine of *stare decisis*. In discussing the reasons for following past decisions, the Court stated:

> Very weighty considerations underlie the principle that courts should not lightly over-

> rule past decisions. Among these are the desirability that the law furnish a clear guide for the conduct of individuals, to enable them to plan their affairs with assurance against untoward surprise; the importance of furthering a fair and expeditious adjudication by eliminating the need to relitigate every relevant proposition in every case; and the necessity of maintaining public faith in the judiciary as a source of impersonal and reasoned judgments. The reasons for rejecting any established rule must always be weighed against these factors.

Id. at 403.

All of the factors noted by this Court as reasons for following precedent are clearly relevant to this case, and the additional fact that the Court of International Trade and the Federal Circuit have exclusive jurisdiction in all cases involving the substantive law in question necessarily means that only this Court is in the position to correct the error reflected in this case.

CONCLUSION

The judgment of the Federal Circuit in this case cannot be reconciled with the precedent established by the Court of Customs and Patent Appeals in *Texas Instruments*. Inasmuch as the Federal Circuit has exclusive jurisdiction of the cases which involve the substantive law in question, this petition should be

granted, because only this Court can correct an error made by the Federal Circuit.

It is respectfully submitted that the error reflected in the decision of the Federal Circuit is so clear and fundamental that it should not be permitted to stand, and that it would be appropriate for this Court to consider summary disposition on the merits in favor of the petitioner.

Respectfully submitted,

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July 25, 1988

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

87-1404

BURROUGHS CORPORATION,
Plaintiff-Appellant,

v.

THE UNITED STATES,
Defendant-Appellee.

John S. Rode, Rode and Qualey, of New York, New York, argued for plaintiff-appellant. With him on the brief was *William J. Maloney*.

Joseph I. Liebman, Attorney in Charge, International Trade Field Office, Department of Justice, of New York, New York, argued for defendant-appellee. With him on the brief were *Richard K. Willard*, Assistant Attorney General, *David M. Cohen*, Director and *Susan Handler-Menahem*.

Appealed from: U.S. Court of International Trade
Judge DiCarlo

REC'D. 4/26/88

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

87-1404

BURROUGHS CORPORATION,
Plaintiff-Appellant,

v.

THE UNITED STATES,
Defendant-Appellee.

DECIDED: April 26, 1988

Before MARKEY, *Chief Judge*, SMITH and ARCHER, *Circuit Judges.*

SMITH, *Circuit Judge.*

Burroughs Corporation (Burroughs) appeals from the judgment of the United States Court of International Trade that its merchandise was properly classified under item 676.15 of the Tariff Schedules of the United States (TSUS) as accounting, computing, and other data processing machines incorporating a calculating mechanism.[1] We affirm.

Issue

Whether the Court of International Trade erred in holding that the merchandise was properly classified under 676.15 of TSUS.

---

[1] *Burroughs Corp.* v. *United States*, 664 F. Supp. 507 (Ct. Int'l Trade 1987).

I. Background

Burroughs imported certain office machines invoiced as electronic desk calculators, transaction recorders, and transaction terminals into the United States. All of the machines perform the four basic arithmetic functions: addition, subtraction, multiplication, and division. In addition, the C Series Calculators are preprogrammed to perform complex business computations for installment, commercial, and mortgage loans, future-value calculations for individual retirement accounts, and other banking and nonbanking calculations. The TR/TT Series Machines are used to record a broad range of money transactions and to establish effective cash control. They can record the amount of money received in a particular transaction, as well as keep track of the total amount of money received daily, certify sales slips, total receipts, and provide coded data which can later be recorded in other documents or ledgers. They are also capable of verifying account numbers, processing and recording the transfer of funds among accounts, reading magnetically coded data on credit cards, and providing general auditing.

The United States Customs Service (Customs) classified the machines under item 676.15 of TSUS and assessed duty at the rate of 5.5 percent ad valorem. The superior heading and item 676.15 provide:

> Calculating machines: accounting machines, cash registers, postage-franking machines, ticket-issuing machines, and similar machines, all the foregoing incorporating a calculating mechanism: Accounting, computing, and other data-processing machines.

Headnote 2(b) defines the term "calculating mechanism" as:

> [A] "calculating mechanism" is one designed to perform one or more of the four arithmetical op-

erations, i.e., addition, subtraction, multiplication, and division.

Burroughs challenged Customs' classification of the machines in the Court of International Trade. Burroughs contended that the machines should have been classified under item 676.30 as office machines not specially provided for, with a duty of 5.0 percent ad valorem. According to Burroughs, the machines do not contain a calculating mechanism within the meaning of Headnote 2(b) and, thus, do not fall within item 676.15.

The Court of International Trade recognized that the term "calculating mechanism" had never been judicially interpreted. However, the court viewed the Court of Customs and Patent Appeals' (CCPA) interpretation of the term "mechanism" in *United States* v. *Texas Instruments Inc.*[2] as controlling. In *Texas Instruments*, the CCPA had concluded that the term "mechanism" could not cover an integrated circuit which was to be used in a watch because it did not contain moving parts.

The Court of International Trade rejected, as too narrow an interpretation of the definition of "mechanism," Burroughs' argument that, because the calculations in the machines took place completely within the arithmetic logic unit which had no moving parts, the machines did not contain a calculating mechanism. Instead, the court considered whether "the subject merchandise incorporate[d] a structure of working parts which function together to produce an effect, *i.e.* the calculations." The court then found, based on the testimony at trial and an examination of the machines, that the keyboard and the printer contained moving parts and, consequently, that the machines contained a calculating mechanism. The court held that the machines were properly classifiable under item 676.15 of TSUS.

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[2] *United States* v. *Texas Instruments Inc.*, 620 F.2d 269 (CCPA 1980).

II. The Definition of "Calculating Mechanism"

Burroughs argues that the definition of "mechanism" in *Texas Instruments* is "authoritative and controlling precedent," as held by the Court of International Trade. The Government contends that the *Texas Instruments* case is not controlling because it was decided in the context of the horological industry. According to the Government, the development of the watch industry at the time TSUS was enacted was substantially different from that of the computer industry. This difference, which is reflected in the legislative history of the provisions in question, suggests that a different meaning was intended by Congress for the term "calculating mechanism."

The Court of International Trade "decline[d] to engage in speculation regarding alleged congressional intent" because it viewed the definition of "mechanism" in *Texas Instruments* as involving TSUS as a whole. We disagree. The *Texas Instruments* case dealt with the horological industry. The term "mechanism" was defined by the CCPA in the course of determining whether the integrated circuit at issue was part of a watch or clock movement. At the time TSUS was enacted, all watches had moving parts. The court in *Texas Instruments* specifically noted that it was not until 1972 that any watches were produced which did not contain moving parts. In contrast, computers using electronic parts were well known in 1962. The CCPA's definition of "mechanism" must be read in this light and, therefore, it does not control the definition of "calculating mechanism" at issue in this case.

The definition of "mechanism" was not limited to articles which contained moving parts at the time TSUS was enacted. "Mechanism" is defined in The American College Dictionary (1962) by Random House as:

> 2. the machinery, or the agencies or means, by which a particular effect is produced or a purpose is accomplished. . . . 4. the structure, or arrange-

> ment of parts, of a machine or similar device, or anything analogous.

Webster's New Collegiate Dictionary (1959) defines "mechanism" as:

> 1. The parts of a machine, taken collectively; the arrangement or relation of the parts of anything as adapted to produce an effect.

As these definitions make clear, the meaning of the term "mechanism" was not limited to something with moving parts. Therefore, we must consider the legislative history to determine what Congress intended when it defined the term "calculating mechanism" in Headnote 2(b).

In the *Tariff Classification Study*,[3] the proposed statute created a classification for office machines in Schedule 6, Part 4, Subpart G. These machines had been classified under paragraphs 353 and 372 of the Tariff Act of 1930. Paragraph 353 contained provisions for "articles having as an essential feature an electrical device or element." Included among the articles classified under paragraph 353 were "calculating machines specially constructed for multiplying and dividing, and having an electric motor as an essential feature," and "adding machines having an electric motor as an essential feature." Paragraph 372 included provisions for accounting machines, adding machines, and calculating machines specially constructed for multiplying and dividing which did not have an electrical device as an essential feature.

The new classification was designed to combine paragraphs 353 and 372 and to provide a more systematic way

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[3] U.S. Tariff Comm'n, *Tariff Classification Study*, Schedule 6.—Metals and Metal Products (1960).

to classify office machines.[4] Under the general category of office machines, the proposed statute provided for:

> Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines, and similar machines, all the foregoing incorporating a calculating mechanism.

The phrase "calculating mechanism" was defined in Headnote 2(b) in terms of the results to be achieved, "designed to perform one or more of the four arithmetical operations," rather than in terms of the method of accomplishing those results. Computers having electronic components were well known to the drafters of TSUS, and nothing in the legislative history indicates that Congress intended to exclude them from the term "calculating mechanism." In fact, a letter from the Electronics Industry Association (EIA) to the Tariff Commission supports the view that computers with electronic components were intended to fall within this provision. With regard to item 676.15, the letter stated:[5]

> 676.15: Accounting, computing, and other data-processing machines
>
> It is proposed by EIA that accounting machines be removed from this category and that it cover only computing and data-processing machines.
>
> From the standpoint of the electronics industry, an accounting machine bears little relationship to a computer and data-processing machine. The latter are highly complex, are based upon electronic theory, and have a high unit value and

---

[4] *Id.* at 273-74.

[5] Letter from James Secrest, Executive Vice President, Electronics Indus. Ass'n, to Donn Bent, Secretary, U.S. Tariff Comm'n (July 23, 1959), *reprinted in Tariff Classification Study*, at 872-75.

relatively small market. U.S. production facilities for computers and data-processing machines are in the infant stage while the market for accounting machines is on the decline relatively. Production techniques are largely unrelated.

Conclusion

We conclude that the term "calculating mechanism" does not require moving parts and was intended to cover machines in which the calculations are performed in integrated circuits. Therefore, the judgment of the United States Court of International Trade that the subject merchandise contains a calculating mechanism within the meaning of Schedule 6, Part 4, Subpart G, Headnote 2(b), of TSUS is affirmed.

AFFIRMED

APPENDIX B

SLIP OP. 87-50

UNITED STATES COURT OF INTERNATIONAL TRADE

Court No. 78-7-01362

BURROUGHS CORPORATION,

Plaintiff,

v.

UNITED STATES,

Defendant.

BEFORE: DiCARLO, Judge

Plaintiff challenges the United States Customs Service (Customs) classification of its merchandise under item 676.15 of the Tariff Schedules of the United States (TSUS) as accounting, computing and other data processing machines incorporating a calculating mechanism. Plaintiff contends this merchandise referred to as the C Series Calculators and TR/TT Series Machines does not incorporate a calculating mechanism and is properly classified as office machines not specially provided for, under item 676.30, TSUS. Alternatively, plaintiff asserts that if the merchandise is found to incorporate a calculating mechanism then the proper classification of the C Series Calculators is under item 676.20, TSUS, as calculating machines specially constructed for multiplying and dividing and the TR/TT Series Machines is under item 676.22, TSUS, as cash registers.

Held: The merchandise does incorporate a calculating mechanism. The proper classification of the C Series Calculators and the TR/TT Series Machines is under item 676.15, TSUS, as accounting, computing and other data processing machines incorporating a calculating mechanism.

[Judgment for defendant.]

Decided: April 15, 1987

Rode & Qualey (*John S. Rode* and *William J. Maloney*) for plaintiff.

Richard K. Willard, Assistant Attorney General, *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office (*Susan Handler-Menahem*) for defendant.

DiCARLO, Judge: Plaintiff challenges the United States Customs Service (Customs) classification of merchandise invoiced as electronic desk calculators Styles C6451 and C6453 (the C Series Calculators), transaction recorders models TR 101, TR 101-1, TR 102-3, TR 102-6 and transaction terminals Models TT 102-3, TT 102-4, TT 102-6, TT 142-3, and TT 142-4 (the TR/TT Series Machines) as accounting, computing and other data processing machines incoporating a calculating mechanism under item 676.15 of the Tariff Schedules of the United States (TSUS) dutiable at 5.5% ad valorem. The Court has jurisdiction under 28 U.S.C. § 1581(a) (1982). The action is dismissed.

Discussion

Plaintiff contends the articles do not incorporate a "calculating mechanism" and are properly classified under item 676.30, TSUS, as office machines not specially provided for and dutiable at 5% ad valorem. Alternatively, plaintiff asserts that if the Court finds the merchandise does incorporate a calculating mechanism then the proper classification of the C Series Calculators is under item 676.20, TSUS, as calculating machines specially constructed for multiplying and dividing dutiable at 5% ad valorem and the TR/TT Series Machines is under 676.22, TSUS, as cash registers dutiable at 5% ad valorem. Defendant contends that if the merchandise is found to incorporate a calculating mechanism, but is found not to be properly classified

under item 676.15, TSUS, then it should be classified under item 676.25, TSUS, dutiable at 5.5% ad valorem.

Calculating Mechanism

The first issue before the Court is whether the subject merchandise incorporates a "calculating mechanism" as that phrase is defined in Schedule 6, Part 4, Subpart G, Headnote 2(b), TSUS:

> A "calculating mechansim" is one designed to perform one or more of the four arithmetical operations, i.e., addition, subtraction, multiplication, and division.

Plaintiff concedes that the merchandise is capable of performing one or more of the four arithmetical operations but says that such calculations are not performed by a "mechanism" as that term has been defined for purposes of interpreting the TSUS by the court in *Texas Instruments Inc. v. United States*, 82 Cust. Ct. 272, C.D. 4810, 475 F. Supp. 1183 (1979), *aff'd*, 67 CCPA 59, C.A.D. 1244, 620 F.2d 269 (1980).

The phrase "calculating mechanism" as a whole has never been judicially interpreted. This phrase as used in the TSUS has no direct counterpart in the Tariff Act of 1930 from which the TSUS evolved. The principal legislative history of the TSUS, the *Tariff Classification Study* prepared by the United States Tariff Commission, indicates that all of Subpart G of the TSUS was derived from paragraphs 353 and 372 of the Tariff Act of 1930, which do not contain any reference to this phrase. *See* 8 *Tariff Classification Study*, 253, 254, 273, 274, 280, 288, 289 (1960).

The term "mechanism," however, has been defined in what the Court considers authoritative and controlling precedent. In *Texas Instruments*, the court considered the proper classification of integrated circuits imported for in-

corporation and use in solid-state electronic digital watches. Customs classified the integrated circuits in the provision in Schedule 7, Part 2, Subpart E for "other assemblies and sub-assemblies for watch movements," item 720.75, TSUS. The appellate court affirmed the decision of the trial court which had determined that the articles in question were neither assemblies nor sub-assemblies for watch movements within the meaning of Schedule 7, Part 2, Subpart E, Headnote 2(b), nor assemblies nor sub-assemblies for clock movements as defined in Schedule 7, Part 2, Subpart E, Headnote 2(c).

More specifically, the Court of Customs and Patent Appeals defined the term "mechanism" as used in the TSUS when reaching its determination on the government's alternative claim for classification:

(5) Clock Movement

> The Government argues that if the articles are not classifiable as watch movements they are classifiable as "clock movements or mechanisms" under TSUS item 720.86, because schedule 7, part 2, subpart E, headnote 2(c), says for the purpose of subpart E: "The term 'clock movements' means any movement or mechanism, other than 'watch movements' as defined in headnote 2(b), above, intended or suitable for measuring time." That language, says the Government, requires that any time-keeping device not meeting the dimensional and physical requirements of "watch movement" be classified as a "clock movement or mechanism."
>
> That argument turns on the meaning of "mechanism" at the time the TSUS were enacted. That meaning is of a breadth insufficient to encompass a solid-state module having no moving parts. Webster's Third New International Dictionary

> (1961) defines mechanism as "a piece of machinery: a structure of working parts functioning together to produce an effect," with machine defined as "(a)ny device consisting of two or more * * * parts, which * * * may serve to transmit and modify force and motion * * *." That that meaning has long been accepted is evidenced by Lockwood's Dictionary of Mechanical Engineering Terms (1913), defining mechanism as "an assemblage of parts * * * which embraces the essential principles on which the machine is constructed," and "machine" "an assemblage of parts * * * by which motion and force are transmitted."
>
> The integrated circuit before us is not a sub-assembly of a mechanism for the same reason it is not a sub-assembly of a movement: there is simply no physical movement or motion generated in or by the circuit.

Texas Instruments, 67 CCPA at 64, 620 F.2d at 272.

Defendant argues that the definition of mechanism rendered by the court in *Texas Instruments* is not controlling in the present action. According to defendant, *Texas Instruments* "bears no relevance to this action as the relevant factors and Congressional intent are different in this case" as *Texas Instruments* "concerned the definition of a different term in the context of a different industry and under a different state of facts as to the existence of the merchandise at the time of the enactment of the Tariff Schedules."

It is true that the court in *Texas Instruments* was concerned with a different industry, but its definition of mechanism involves the TSUS as a whole. The *Texas Instruments* Court stated at the outset that the government's alternative argument "turns on the meaning of 'mechanism' at the time the TSUS were enacted" and

went on to discuss generic definitions of mechanism existing at the time of that enactment. 67 CCPA at 64, 620 F.2d at 272.

Defendant argues that Congress was aware of the emergence of computers at the time of enactment of the TSUS and must have had a meaning in mind for mechanism that would encompass such technology. As previously noted, the phrase "calculating mechanism" was created with passage of the TSUS and no congressional intent as to the meaning of the term mechanism is evident in the definition of that phrase provided in Schedule 6, Part 4, Subpart G, Headnote 2(b), TSUS, quoted above. In view of the controlling definition of mechanism rendered in *Texas Instruments*, this Court declines to engage in speculation regarding alleged congressional intent contrary to such definition.

Relying upon the definition, plaintiff argues that the subject merchandise does not incorporate a calculating mechanism because all arithmetic computations take place completely within the Arithmetic Logic Unit (ALU), which does not contain moving parts. Plaintiff supports this position by testimony of its witnesses at trial indicating that only the electronic components of the ALU make the calculations.

Plaintiff's application of the definition of mechanism determined in *Texas Instruments* is too narrow. In that case, the only article before the court was the solid-state integrated circuit. Defining mechanism as a "structure of working parts functioning together to produce an effect," the court reasoned that by itself this circuit could not be an assembly or sub-assembly of a watch/clock movement or mechnaism because it had no moving parts. *Texas Instruments*, 67 CCPA at 64, 620 F.2d at 272.

It is conceded that the ALU does not contain moving parts. If as in *Texas Instruments* this were the only article before the Court then that case might dictate the outcome

in this action. Employing the definition of mechanism utilized in that case, however, the question before this Court is whether the subject merchandise incorporates a structure of working parts which function together to produce an effect, *i.e.* the calculations.

Based on testimony at trial and an examination of the merchandise, the Court finds that the keyboard contains moving parts and that the keys must be depressed before there is input with which the ALU can perform its computations. After such computations take place, the printer (which also contains moving parts) usually is relied upon to visualize the results. Thus, the Court finds that the merchandise incorporates a calculating mechanism because of the interrelationship among the keyboard, the ALU, and the printer.

This conclusion does not contradict testimony of plaintiff's witness that the ALU is not connected by a mechanism but only by electrical wires. While it is agreed that no mechanism connects these individual parts, the parts taken as a whole constitute a calculating mechanism. The parts, some of which move, function together to produce an effect, since input from the keyboard is computed in the ALU and the resulting calculations are usually visualized by the printer.

The C Series Calculators

Plaintiff next argues that even if the C Series Calculators do contain a calculating mechanism, they should be classified under item 676.20, TSUS, as calculating machines specially constructed for multiplying and dividing. Plaintiff contends that since the C Series Calculators perform addition, subtraction, multiplication and division, they are calculating machines; and since they incorporate features for the specific purpose of enabling them to multiply and divide efficiently, they are specially constructed for multiplying and dividing. In support of its contention,

plaintiff cites *Clary Corp. v. United States*, 48 Cust. Ct. 416, Abs. 66690 (1962); *Air-Sea-Forwarders and Wholesale Business Machines v. United States*, 55 Cust. Ct. 456, Abs. 69589 (1965), *aff'd* 54 CCPA 67, C.A.D. 907 (1967); and *Plus Computing Machines, Inc. v. United States*, 44 CCPA 160, C.A.D. 655 (1957) which discuss the meaning of paragraphs 353 and 372 of the Tariff Act of 1930, predecessors to item 676.20, TSUS.

Defendant asserts that the C Series Calculators are "more than" or "other than" calculating machines specially constructed for multiplying and dividing and argues that the cases cited by plaintiff "reveal the understanding and intent of Congress that the provision for calculating machines specially constructed for multiplying and dividing was limited to simple machines which basically performed the four arithmetical functions." Defendant points to the preprogrammed functions of the C Series Calculators in support of its position that they are properly classified under item 676.15, TSUS, as accounting, computing and other data processing machines.

The cases cited by plaintiff involve various machines which could multiply and divide by the use of unique structures designed for such purposes. In each case, the court confronted the question whether the unique structures which made the machine capable of multiplying and dividing more efficiently justified its classification separate from those machines which could only multiply and divide by repeated use of the same structures for adding and subtracting. In short, the courts focused upon whether the machines incorporated "special" structures aiding multiplying and dividing justifying classification under paragraphs 353 or 372 or whether the machines were merely adding machines capable only of simple addition or subtraction.

The Court finds these cases do not provide guidance in the present action for two reasons. The cases were decided

before enactment of the TSUS and the courts prior to such enactment could not have considered other special categories created for machines incorporating a calculating mechanism such as item 676.15, TSUS, involving accounting, computing and other data processing machines. Also, the C Series Calculators are much more technologically advanced than the machines in the earlier cases and that fact takes the issue of their proper classification beyond the specific analysis in the prior cases refining the distinction between specially constructed machines for multiplication and division and mere adding machines.

The C Series Calculators, unlike the machines in the cited cases, are capable of doing much more than the four basic arithmetic functions. These machines are preprogrammed to guide the user through intricate business computations regarding financial equations for installment, commercial and mortgage loans; future value claculations for individual retirement accounts; and many other banking and some non-banking problems. The machines are priced higher than those which perform only the four arithmetic functions because of such preprogramming and plaintiff markets them by highlighting these preprogrammed aspects. *See* Exhibit C (stating that the "Burroughs C6453 is more than just a new calculator, it's a whole new way of simplifying program input for solutions for your financial problems"); *see also* Exhibit B.

The "more than" doctrine basically says "that from the stand-point of functional analysis the object is a combination not adequately described by a particular tariff term." *Evvan Importers Inc. v. United States*, 85 Cust. Ct. 51, 52-53, C.D. 4869 (1980). It has been held that only the most general rules have evolved from cases dealing with the "more than" doctrine, and that each case must be decided on its own facts. *E. Green & Son, Inc. v. United States*, 59 CCPA 31, C.A.D. 1032, 450 F.2d 1396 (1971); *Ozen Sound Devices v. United States*, 67 CCPA 67, C.A.D. 1246, 620 F.2d 880 (1980).

In the case at hand, the Court finds that the preprogramming is the most significant feature of the C Series Calculators. The preprogramming enables a user to perform mathematical tasks far beyond those of machines designed specifically for multiplication and division. The Court holds that the C Series Calculators are "more than" calculating machines specially constructed for multiplying and dividing and are not properly classifiable under item 676.20, TSUS.

Defendant contends that because of the preprogramming features of the C Series Calculators this merchandise is properly classified under item 676.15, TSUS, as accounting, computing, and other data processing machines. Plaintiff points to the testimony of its witness and argues that the general term "data processing" is limited to devices which have an input and output structure and a large amount of storage and memory potential. Plaintiff also claims that data processors only include devices incorporating hardware working in conjunction with software. Plaintiff asserts that the C Series Calculators are not data processing machines because they do not have a large amount of memory capacity or storage capability and rely on the use of firmware as opposed to software.

Plaintiff also states that the reliance on firmware makes its machines limited to a very specific purpose, since firmware is programming less susceptible to change than software. Plaintiff claims that the specific purpose is as a calculating machine and that the inferior heading for "calculating machines specially constructed for multiplying and dividing" more specifically describes this multipurpose machine according to such principal purpose. To bolster its position, plaintiff points to Headnote 2, Part 4, Schedule 6 of the TSUS which states:

> Unless the context requires otherwise, and subject to headnote 1 to subpart A of this part, a multi-purpose machine is classifiable according to

> its principal purpose, but if such a machine is not described in a superior tariff heading as to its principal purpose, or if it has no one principal purpose, it is classifiable in subpart H of this part as a machine not specially provided for.

The Court must determine whether the data processing machines covered by item 676.15, TSUS are limited as plaintiff has suggested. Where there is an enumeration of specific words of description (*e.g.*, "accounting," "computing") followed by a general term or phrase (*e.g.*, "other data processing machines") the rule of *ejusdem generis* aids in statutory interpretation. *See, e.g., European Trading Co. v. United States*, 19 CCPA 82, 86-87, T.D. 45225 (1931). Under *ejusdem generis*, which means "of the same kind," where an enumeration of specific things is followed by a general word or phrase, the general word or phrase is held to refer to things of the same kind as those specified. *Izod Outerwear, Div. of General Mills, Inc. v. United States*, 9 CIT ___, Slip Op. 85-72 (July 23, 1985).

The Court turns to a lexicographical source prior to enactment of the TSUS for a common meaning of accounting and computing machines:

> Accounting machine: 1: a key-operated machine which dates, codes, tabulates, adds, subtracts, or totals chiefly in the process of keeping business records (as accounts payable or receivable) 2: a business machine that selects information from punched cards fed into it tabulates, adds, subtracts, or totals in various predeterminable ways, and prints the results.

Webster's Third New International Dictionary, 13 (1961).

> Computing machine: COMPUTER

Id. at 468.

> Computer: One that computes: as a: a calculator esp. designed for the solution of complex mathematical problems; specif: an automatic electronic machine for performing simple and complex calculations . . . .

Id.

In light of these definitions which evidence the common meaning of such terms at the time of the enactment of the TSUS the Court is not persuaded that the types of data processing machines covered by item 676.15, TSUS, are limited as plaintiff has suggested. A large amount of memory capacity and storage capability and a reliance on software rather than firmware are not prerequisites to classification under this provision of the TSUS.

Plaintiff has failed to overcome the presumption of correctness that attaches to Customs classification. The Court finds that the C Series Calculators are data processing machines similar to accounting and computing machines. The Court holds that the principal purpose of these machines is as data processing machines and that they are properly classified under item 676.15, TSUS.

The TR/TT Series Machines

The final contention made by plaintiff is that the TR/TT Series Machines should be classified under item 676.22, TSUS, as cash registers. In support of this position, plaintiff cites again to Headnote 2, Part 4, Schedule 6, TSUS and argues the principal purpose of these machines is as a cash register.

Plaintiff points to a lexicographical source before enactment of the TSUS, which defines cash registers as

> A business machine that records the amount of money received (as in running daily sales), that usu. has a money drawer, that exhibits the amount of each sale, and that often performs

> related operations (as totaling receipts, counting particular operations, certifying sales slips, or punching coded data on tape for later recording in ledgers or analysis sheets).

Webster's Third New International Dictionary at 347. Plaintiff also cites to the *Explanatory Notes to the Brussels Nomenclature*, Volume III, 895 (1967), under heading 84.52:

> (C) CASH REGISTERS
> These machines are used in shops, offices, etc., to provide a record of all money transactions as they occur, and are often combined with the till or drawer in which the cash is kept. In addition to keeping in the machine a record of each transaction, they often provide a visual indication of the amount involved and a separate printed ticket indicating the amount.

Plaintiff asserts that the testimony of its witnesses and the exhibits introduced at trial show the purpose of the TR/TT Series Machines is to record a broad range of money transactions and to establish effective cash control. Plaintiff contends that the machines: "(1) are used in business; (2) record the amount of money received; (3) record such amounts on a running daily total basis; (4) exhibit the amount of each receipt; (5) total receipts; (6) count particular operations; (7) certify sales slips; and (8) provide coded data on a tape for later recording on other documents or ledgers or accounts." According to plaintiff, the machines fit the description covered by this *eo nomine* provision covering all forms of cash registers.

Defendant cites to a different lexicographical source which defines cash registers as "[A]n automatic mechanical device with keyboard for recording, adding and displaying the amount of cash placed in its money drawer." *Funk and Wagnall's New Standard Dictionary* (1956). Because the TR/TT Series Machines do not contain a cash drawer and are not used to "ring up cash purchases" as its wit-

ness testified cash registers traditionally do, defendant argues that the machines are not cash registers. Defendant also asserts that plaintiff does not market the machines as cash registers and that they are not sold to retail stores where customarily cash registers are used.

Defendant further argues that the machines should not be classified as cash registers because they are "more than" cash registers within the meaning of that provision. In support of this claim, defendant points to the variety of functions the TR/TT Series Machines are capable of performing such as the ability to verify account numbers, process and record the transfer of funds among accounts, read magnetically encoded data on credit cards, and provide general auditing.

Based upon the testimony and exhibits presented at trial, the Court finds that the TR/TT Series Machines can be used in business to do the operations enumerated by plaintiff. The machines are also capable of performing the additional operations outlined by defendant, however, and the Court is persuaded that the additional functions make these machines "more than" cash registers.

JUDGMENT

UNITED STATES COURT OF INTERNATIONAL TRADE

DOMINICK L. DiCARLO, JUDGE

Court No. 78-7-01362

BURROUGHS CORPORATION,

Plaintiff,

v.

UNITED STATES,

Defendant.

This case having been duly submitted for decision and the Court, after due deliberation, having rendered a decision herein; now, in conformity with said decision,

IT IS HEREBY ORDERED that this action is dismissed.

Date: New York, New York
April 15, 1987

/s/ DOMINICK L. DiCARLO
DOMINICK L. DiCARLO
JUDGE

APPENDIX C

Tariff Schedules of the United States, Schedule 6, Part 4.

Subpart G. Office Machines

Subpart G headnotes

2. For the purposes of this subpart—

(a) the term "office machines" refers to machines which are used in offices, shops, factories, workshops, schools, depots, hotels, and elsewhere, for doing work concerning the writing, recording, sorting, filing, mailing of correspondence, records, accounts, forms, etc., or for doing other "office work", and which have a base for fixing or placing them on a table, desk, wall, floor, or similar place; and

(b) a "calculating mechanism" is one designed to perform one or more of the four arithmetical operations, i.e., addition, subtraction, multiplication, and division.

ITEM	ARTICLES
	Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines, and similar machines, all the foregoing incorporating a calculating mechanism:
676.15	Accounting, computing, and other data-processing machines.
ITEM	ARTICLES
676.30	Office machines not specially provided for.

APPENDIX D

Appeal No. 79-33.

THE UNITED STATES,

Appellant,

v.

TEXAS INSTRUMENTS INCORPORATED,

Appellee.

UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS.

April 17, 1980.

Appeal was taken from judgment entered by the United States Customs Court, Boe, J., 475 F.Supp. 1183, in classification proceeding. The United States Court of Customs and Patent Appeals, Markey, C.J., held that encapsulated integrated circuits used in solid state watches were properly classified as transistors and other related electronic crystal components under Tariff Schedule Item 687.60 rather than as subassemblies for watch movements under Tariff Schedule Item 720.75.

Affirmed.

Alice Daniel, Asst. Atty. Gen., Washington, D.C., David M. Cohen, Director, Commercial Litigation Branch, Sheila N. Ziff, New York City, attorney of record, for appellant.

Frederick L. Ikenson, Washington, D.C., for appellee.

Henry C. Ikenberry and Gary N. Horlick, Steptoe & Johnson, Washington, D.C., for Talley Industries, amicus curiae.

James F. Davis, John F. Bruce and Frederick H. Graefe, Howrey & Simon, Washington, D.C., for Timex Corp., amicus curiae.

Ive Arlington Swan, Atty. Gen. of the Virgin Islands and William L. Blum, Legal Counsel to the Virgin Islands Dept. of Commerce, Charlotte Amalie, St. Thomas, V.I., for Government of the Virgin Islands, amicus curiae.

Eugene A. Ludwig, Covington & Burling, Washington, D.C., attorney of record for American Watch Ass'n, amicus curiae.

Louis Schneider and Herbert Peter Larsen, Freeman, Meade, Wasserman & Schneider, New York City, for General Elec. Co., amicus curiae.

Before MARKEY, Chief Judge, RICH, BALDWIN and MILLER, Judges, and FORD,* Judge.

MARKEY, Chief Judge.

The Government appeals from the judgment of the Customs Court, *Texas Instruments, Inc. v. United States*, 82 Cust.Ct. 272, C.D. 4810, 475 F.Supp. 1183 (1979), sustaining Texas Instruments' classification protest relating to imported integrated circuit devices used as components in solid state digital watches.[1] We affirm.

Background

The imported articles, entered from El Salvador in August 1976, are integrated circuit devices, each of which is

* The Honorable Morgan Ford, Judge, United States Customs Court, sitting by designation.

[1] Briefs *amicus curiae* were filed by American Watch Association, General Electric Company, Government of the Virgin Islands, Talley Industries, and Timex Corporation.

affixed to a lead frame and encapsulated in molded plastic material shaped to facilitate addition of other components required to complete a digital watch module, i.e., crystal, capacitor, batteries and display.

The Customs Service classified the imported articles under TSUS item 720.75[2] as assemblies and subassemblies for watch movements. Texas Instruments claimed classification under TSUS item 687.60.[3] The Government asserted an alternate classification under TSUS item 720.86[4] as assemblies and subassemblies for clock movements.

Judge Nils A. Boe held: (1) the legislative history of TSUS item 720.75 does not evidence a congressional intent to include every device capable of measuring time within

---

[2] Assemblies and subassemblies for watch movements consisting of two or more parts or pieces fastened or joined together:

* * * * * * * *

720.75	Other assemblies and subassemblies	4.5¢ for each jewel (if any) + the column 1 rate specified in item 720.65 for bottom or pillar plates or their equivalent therein . . . but the total duty on the assembly or subassembly shall not . . . be less than 22.5% ad val. . . .

[3] Electronic tubes (except X-ray tubes); photocells; transistors and other related electronic crystal components; mounted piezoelectric crystals; all the foregoing and parts thereof:

* * * * * * * *

687.60 Other ..... 6% ad val.

[4] Assemblies and subassemblies for clock movements, consisting of two or more parts or pieces fastened or joined together:

* * * * * * * *

Other assemblies and subassemblies:

* * * * * * * *

720.86	For other movements . .	16% ad val. + 6.25¢ for each jewel (if any) + 0.75¢ for each other piece or part.

the meaning of "watch movement"; (2) "watch movement" refers to a mechanism possessing moving parts to which or from which motion is transferred; (3) the molecular vibration within the quartz crystal of an electronic watch module does not satisfy that motion requirement; (4) the imported articles do not bear an essential resemblance to watch movements, and are specifically provided for under TSUS item 687.60; (5) the imported articles are not more than integrated circuits; and (6) the imported articles are not classifiable as "clock movements" under TSUS item 720.86, the sole distinction between clock and watch movements being size.

Issue

The dispositive issue is whether the Customs Court erred in holding the articles properly classified under TSUS item 687.60 as transistor and other related electronic crystal components rather than as subassemblies for watch or clock movements.

OPINION

The Government argues the Customs Court erred because: (1) legislative history shows a congressional intent to include electronic movements within the term "watch movements"; (2) the quartz crystal incorporated into the imported articles after importation provides movement; (3) the imported articles bear an essential resemblance to watch movement subassemblies in existence when the TSUS was enacted; (4) the articles are more than integrated circuits; and (5) if the articles are not watch movements, they are clock movements.

(1) Legislative History

The Government cites portions of the *Tariff Classification Study* and the *Congressional Record* that indicate a congressional intent that electronically regulated move-

ments be classified with conventional movements. Those citations do not, however, persuasively show that a solid state module having no moving parts was intended by Congress to be included within the provision for "watch movements."[5] Accordingly, the Customs Court properly determined the meaning of the term "watch movements" by reference to texts and dictionaries in use at the time the TSUS was enacted, the common understanding of the term in the horological industry at that time, and the testimony of experts as to what the term meant when the TSUS was enacted. The conclusion of the Customs Court that the term refers to a mechanism incorporating "moving parts to which or from which motion is transferred," 82 Cust.Ct. at 278, 475 F.Supp. at 1187, has not been shown to be erroneous by the Government. We agree with the Customs Court that the term requires a mechanism for the transfer of motion. Indeed, until 1972, every watch sold contained a movement meeting that definition. Electronically regulated watch movements, the subject of much discussion when the TSUS were enacted (and of the legislative history cited by the Government), also have moving parts and thus meet that definition. The Customs Court correctly decided that the articles at issue here, having no mechanism for the transfer of motion, were not "movements" or subassemblies of "movements" within the meaning of that term as it was understood in 1962.

(2) Quartz Crystal Motion

The Government argues that even if motion is required by the definition of watch movement, that requirement is satisfied by the vibration of the quartz crystal later incorporated into the imported articles. We do not accept

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[5] Congress rejected an attempt to amend the relevant TSUS items in 1975 and 1976 to include components of solid state watches under the TSUS provisions for watches. H.R. 10176, 94th Cong., 1st Sess. (1975); H.R. 14600, 94th Cong., 2nd Sess. (1976).

that contention. The magnitude of the motion within the crystal is roughly one angstrom (one ten-billionth of a meter); the motion is essentially molecular vibration; and the motion does not transmit mechanical energy or transfer motion to or from any other part.

(3) Essential Resemblance

The Government argues that the imported articles bear an essential resemblance to subassemblies for watch movements in existence when the TSUS were enacted and thus should be classifed with them. That argument is supported by a functional analysis: because the imported articles and prior subassemblies are used to keep time and meet certain dimensional requirements, they should be classified together.

The required essential resemblance is to those characteristics established by the TSUS as the criteria of classification. *Davies Turner & Co. v. United States*, 45 CCPA 39, 41-42, C.A.D. 669 (1957). The criteria established by the TSUS for classification as a watch movement are: (1) a timepiece movement, (2) less than 1.77 inches wide and 0.5 inch thick. Though the dimensional requirements are met by the imported article, it does not bear an essential resemblance to a timepiece movement because the imported article is not and does not contain a movement. We agree with the Customs Court that the articles are more specifically provided for as transistors and other related electronic crystal components.

(4) "More Than" Integrated Circuits

Arguing that the imported articles are more than integrated circuits, the Government says classification in a

TSUS item for integrated circuits is improper because: (1) the encapsulation material serves as a housing for other components; (2) the lead frame serves as the device's substrate; and (3) not all the usable terminals are connected to external leads.

"Only the most general of rules can be ascertained from the previous decisions dealing with the 'more than' doctrine, and it appears that each case must in the first analysis be determined on its own facts." *E. Green & Son (New York), Inc v. United States*, 59 CCPA 31, 34, C.A.D. 1032, 450 F.2d 1396, 1398 (1971). This court will not reverse on questions of fact unless the findings are unsupported by substantial evidence or are clearly contrary to the weight of the evidence. *Pollard Bearings Corp. v. United States*, 62 CCPA 61, 64, C.A.D. 1146, 511 F.2d 568, 571 (1975); *United States v. F.W. Myers & Co.*, 45 CCPA 48, 52, C.A.D. 671 (1958).

The Customs Court's finding that the articles are not more than integrated circuits is fully supported by the evidence. We agree with the Customs Court that the features the Government points to are subordinate to the articles' use as integrated circuits.

(5) Clock Movement

The Government argues that if the articles are not classifiable as watch movements they are classifiable as "clock movements or mechanisms" under TSUS item 720.86, because Schedule 7, Part 2, Subpart E, Headnote 2(c), says for the purpose of Subpart E: "the term 'clock movements' means any movement or mechanism, other than 'watch movements' as defined in headnote 2(b), above, intended or suitable for measuring time." That language, says the Government, requires that any timekeeping device not meeting the dimensional and physical requirements of "watch movement" be classified as a "clock movement or mechanism."

That argument turns on the meaning of "mechanism" at the time the TSUS were enacted. That meaning is of a breadth insufficient to encompass a solid state module having no moving parts. *Webster's Third New International Dictionary* (1961) defines mechanism as "a piece of machinery: a structure of working parts functioning together to produce an effect," with machine defined as "[a]ny device consisting of two or more . . . parts, which . . . may serve to transmit and modify force and motion . . . ." That that meaning has long been accepted is evidenced by *Lockwood's Dictionary of Mechanical Engineering Terms* (1913), defining mechanism as "an assemblage of parts . . . which embraces the essential principles on which the machine is constructed," and "machine" "an assemblage of parts . . . by which motion and force are transmitted."

The integrated circuit before us is not a subassembly of a mechanism for the same reason it is not a subassembly of a movement: there is simply no physical movement or motion generated in or by the circuit.

SUMMARY

The judgment of the Customs Court, that encapsulated integrated circuits, used in solid state watches, are properly classified as transistors and other related electronic crystal components rather than subassemblies for watch movements, is *affirmed*.